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Nos. 03-1164 & 03-1165

In the Supreme Court of the United States

ANN VENEMAN, SECRETARY, UNITED STATES DEPARTMENT OF AGRICULTURE, *ET AL.*,
Petitioners,

v.

LIVESTOCK MARKETING ASSOCIATION, *ET AL.*,
Respondents.

NEBRASKA CATTLEMEN, INC., *ET AL.*,
Petitioners,

v.

LIVESTOCK MARKETING ASSOCIATION, *ET AL.*,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

BRIEF OF TEXAS, 32 OTHER STATES, AND PUERTO RICO AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether the Beef Promotion and Research Act of 1985 (Beef Act), 7 U.S.C. §§2901 *et seq.*, and the implementing Beef Promotion and Research Order (Beef Order), 7 C.F.R. Part 1260, violate the First Amendment insofar as they require cattle producers to pay assessments to fund generic advertising with which they disagree.

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INTEREST OF *AMICI CURIAE*

The State *amici curiae* and the Commonwealth of Puerto Rico,[1] through their Attorneys General, respectfully submit this brief in support of Petitioners. Beef operations exist in every State, and beef production represents a substantial share of most States' agricultural output. Consistent with the States' significant economic stake in the beef industry, forty-five States have chosen to participate directly in the beef promotion, research, and information programs created by Congress in the Beef Act.

These States' beef councils spend approximately $25 million annually for state-level activities authorized by the Act, and they pool another $12 million annually for coordinated national programs. These projects not only support local businesses, but also provide a vehicle for the States to develop and convey health and safety information to their citizens. By invalidating the Beef Act and affirming a nationwide injunction against collection of the Beef Act assessments, the court of appeals has terminated many of these state programs. And those programs that would continue under state-law authority have lost the benefit of uniform national procedures and collective action under the Act's carefully crafted federal-state partnership.

In addition, the court of appeals's decision has ramifications for the States beyond the Beef Act. Congress has established similar federal-state cooperative programs for other products, and almost all States have created their own commodity-marketing programs. Moreover, the court of appeals's restrictive reading of the government-speech doctrine implicates the States' ability to convey any governmental message through private speakers or with funds other than general tax revenues.

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1. For convenience, this brief will refer to the *amici* States and Puerto Rico collectively as "the *amici* States."

SUMMARY OF ARGUMENT

All fifty States engage in beef production, which comprises the largest single segment of the American agricultural economy. Beef accounts for nearly one-fifth of total farm sales and over one million jobs. Congress, and *amici* States, therefore have a substantial interest in promoting the beef industry throughout the Nation.

The federal Beef Act and Beef Order embody a federal-state partnership to advance the American beef industry. The States' active participation in this regime reflects its success: forty-five States have established "qualified state beef councils" under authority of the Act to carry out the Act's beef-promotion efforts.

The state beef councils' direct role in implementing the Beef Act and Beef Order evinces a program of government speech.

In the wake of this Court's decisions in *Glickman v. Wileman Brothers & Elliott, Inc.*, 521 U.S. 457 (1997), and *United States v. United Foods*, 533 U.S. 405 (2001), lower courts have struggled to assess various commodity promotion programs, often framing such challenges as a binary inquiry into whether the contested program more closely approximates the tree-fruit statute upheld in *Glickman*, or the Mushroom Act provisions struck down in *United Foods*.

In this case, beef is neither mushroom nor plum. Rather, promotion under the Beef Act is government speech, controlled and directed by the federal and state governments.

The state beef councils are constrained to deliver a promotional message defined by Congress. And the Secretary of Agriculture retains direct control over that message through her oversight of the councils' activities. Such governmental direction of the councils' message by itself confirms that promotional efforts under the Act are government speech. And in most States, the state beef councils

are themselves governmental entities carrying out the Beef Act's directives.

The Beef Act is but one example of the numerous decisions by Congress and the several States to establish commodity-marketing programs promoting agricultural industries. Such programs directly further the public interest.

Commodity-marketing programs respond to a particular public good problem inherent in many agricultural sectors. Advertising, as a general matter, stimulates consumer demand and helps produce an optimum amount of production and industry. Typically, however, agricultural products are not susceptible to producer-specific advertising; because there are many small and fragmented producers and because many agricultural products are seen as interchangeable commodities, generic advertising is often the only resort.

But generic advertising is by its nature non-excludable, that is, the benefits do not inhere to whichever producer funds the advertising. Thus, each individual producer lacks the economic incentive to fund generic advertising because he cannot capture all the benefit of his promotional efforts. Instead, each producer has an incentive to withhold his own funds and free ride on the generic advertising of others. And when each producer responds to those incentives, the result is sub-optimal in the aggregate: all are hurt by the failure of any one to promote their product.

Governments routinely step in to fill the void of such market failures, and to act in the public interest by providing the public good that would otherwise be under-produced. In the agricultural context, States have frequently chosen to legislate commodity-marketing programs funded by assessments on sales of the commodity. In so doing, the States engage in government speech because they direct the promotional message in a way that accommodates the States' interests to promote the public welfare.

That the mechanism for funding such programs has often been through commodity-specific fees does not render those programs impermissible under the First Amendment. If the States could engage in government speech funded by general revenue—as they surely could—then the fact that they have chosen instead to levy the principal costs of the program on those most directly benefitted by the government speech does not transform the program into one of compelled private speech.

The Beef Act establishes a system of federal-state cooperation to fund and dictate the terms of government speech promoting an industry important to the national interest. In the alternative, the Act can be characterized as a permissible regulation of commercial speech under *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980). And it readily satisfies the *Central Hudson* test.

But the better view is that the Beef Act is not regulating private speech at all; rather, the Act creates a program of government speech, conveying a government message through government actors. And government speech—even funded by commodity-specific assessments on its principal beneficiaries—is entirely consistent with the First Amendment.

ARGUMENT

I. THE OPERATION OF THE BEEF ACT AT THE STATE LEVEL REFLECTS A PROGRAM OF GOVERNMENT SPEECH.

Petitioners correctly explain that the generic advertising authorized by the Beef Act constitutes government speech because Congress specified the message, created a governmental entity to disseminate it, and vested control of the message in a politically accountable official. The state beef councils' role in generating and disseminating generic advertising under the Beef Act bolsters this conclusion.

A. State Governments Have a Substantial Interest in Promoting the Beef Industry Through the Beef Act.

Before examining how the state beef councils' participation in Beef Act promotional activities evinces a program of government speech, it bears explaining why state governments are interested in promoting beef in the first instance, particularly through a coordinated federal-state program such as that created by the Act.

Beef production is the largest segment of the American agricultural economy, accounting for nearly one-fifth of total farm sales and over one million jobs. CHRISTA HARTSOOK, IOWA STATE UNIV., COMMODITY BEEF INDUSTRY PROFILE (June 2003). In 2002, the value of receipts from cattle and calves was approximately $38 billion. ECON. RESEARCH SERV., U.S. DEP'T OF AGRIC., U.S. STATE FACT SHEET (2004). And on a global scale, the United States remains the world's largest producer of beef. *See World Beef Trade Overview*, LIVESTOCK & POULTRY: WORLD MARKETS & TRADE (Foreign Agric. Serv., U.S. Dep't of Agric., Washington, D.C.), Mar. 2004, at 10.

The beef industry plays an equally important role in the economies of the several States. All States engage in beef production, and the economic impact of the industry "contributes to nearly every county in the nation." DAN OTTO & JOHN D. LAWRENCE, ECONOMIC IMPACT OF THE UNITED STATES BEEF INDUSTRY 1 (2001). In forty States, cattle and calves are among the top five agricultural commodities in terms of gross receipts. *See* ECON. RESEARCH SERV., U.S. DEP'T OF AGRIC., STATE FACT SHEETS (2004). And in thirty-eight States, the annual value of those receipts exceeds $100 million. *See id.*[2] Thirty-one States have at

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2. In Texas alone, the annual value of these receipts approaches $6 billion. *See* ECON. RESEARCH SERV., U.S. DEP'T OF AGRIC., STATE FACT SHEETS (2004).

least 10,000 beef-cattle operations. NAT'L AGRIC. STATISTICS SERV., U.S. DEP'T OF AGRIC., AGRICULTURAL STATISTICS 2003, Table 7-22 (2003).

Congress confirmed the beef industry's economic significance to the Nation and the States when it enacted the Beef Research and Information Act of 1976. Pub. L. No. 94-294, 90 Stat. 529 (1976) (amended 1985). Specifically, Congress found that "maintenance and expansion of existing markets and the development of new or improved markets and uses [for beef] are vital to . . . the general economy of the Nation." *Id.*, §2. Congress further noted that "it is in the public interest to provide an adequate, steady supply of high quality beef and beef products readily available to the consumers of the Nation." *Id.* To this end, Congress declared that it was "essential" and "in the public interest" to establish procedures for developing "an effective and continuous coordinated program of research, consumer information, producer information, and promotion" and financing that program through an assessment, or "checkoff," on cattle sales. *Id.*

But this law also provided that any order implementing the assessment would first require approval of a two-thirds majority of beef producers voting in a national referendum. *Id.*, §9. The Secretary of Agriculture conducted such a referendum in 1977, but the order did not obtain the requisite super-majority. BEEF INDUS. COUNCIL ET AL., GROWTH OF A FORCE 26 (1988). In 1978, Congress amended the Act to require only a simple majority to approve the assessment order. Pub. L. No. 95-334, §302, 92 Stat. 433 (1978) (amended 1985). Pursuant to this amended procedure, the Secretary conducted a second referendum in February 1980, but, again, the assessment order was not approved by the producers. GROWTH OF A FORCE, *supra*, at 26.

When the second national referendum failed, States recognized that their interests in promoting beef were not being advanced. Accordingly, many States began to fill this breach by establishing

their own assessment-based beef-promotion programs or raising the assessment rate in their existing programs. *See id.*, at 27-29. By 1985, thirty-eight States had such programs in place. H.R. REP. NO. 99-271, pt. 1, at 187 (1985), *reprinted in* 1985 U.S.C.C.A.N. 1103, 1291.[3] Most of these programs did not impose a mandatory assessment; rather, they either provided for voluntary payment of the assessment or allowed producers to obtain refunds after paying the assessment. In turn, these state-level programs voluntarily pooled some of their assessment funds through a national organization, the Beef Industry Council, in an effort to coordinate national promotion efforts. *See* H.R. REP. NO. 99-271, pt. 1, at 186.

These largely voluntary, state-based efforts did not generate sufficient revenue to adequately advance the federal and state governments' interests in promoting beef. *See* GROWTH OF A FORCE, *supra*, at 28-30. In 1985, in considering amendments to the 1976 Act, the House Committee on Agriculture reported that the "need for prompt action" to promote beef was "acute." H.R. REP. NO. 99-271, pt. 1, at 185. At that time, fed cattle prices had reached their lowest point in seven years,[4] and per capita consumption of beef had "dropped drastically." *Id.*

To address these concerns, Congress enacted the Beef Act in 1985 to amend and improve the 1976 law. In the Act, Congress reiterated its earlier findings that "production of beef and beef products plays a significant role in the Nation's economy" and that "maintenance and expansion of existing markets for beef and beef products are vital to . . . the general economy of the Nation." 7

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3. 28 States had established these programs by statute, whereas the rest were industry-created associations. GROWTH OF A FORCE, *supra*, at 30.

4. "Fed cattle" are raised for a certain period of time in feedlots to achieve a certain weight and yield certain grades of beef before being marketed for slaughter. Most beef sold at retail and in restaurants comes from fed cattle.

U.S.C. §2901(a)(2), (4). And Congress again declared that it was in the public interest to establish "a coordinated program of promotion and research designed to strengthen the beef industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products." 7 U.S.C. §2901(b).

Unlike the 1976 law, these projects would be funded through a mandatory assessment on cattle and beef sales. *Id.*, §2901(b). The new Act provided that the assessment order (Beef Order) would become effective within 120 days after issuance by the Secretary. *Id.*, §2903(b). Then, within twenty-two months after issuance of the Beef Order, the Secretary would conduct a producer referendum, with a majority vote required to continue the Order. *Id.*, §2906(a). In the 1988 referendum, nearly 80% of producers voted to continue the Order. GROWTH OF A FORCE, *supra*, at 33. Not only did the new program enjoy widespread producer support, but the impact on the government's ability to fund promotional efforts was immediate: in 1985, under the largely voluntary, state-based system, checkoff revenues totaled $18.6 million; from October 1986 through September 1987, the first year of the existing mandatory program, total checkoff revenues exceeded $70 million. *Id.*, at 30, 32.

Enactment of the Beef Act and retention of the Beef Order did not entirely displace the States' pre-1985 beef-promotion programs. Indeed, Congress acknowledged in the Act that state organizations already were conducting promotion, research, and information activities, which were "invaluable to the efforts of promoting the consumption of beef and beef products." *Id.*, §2901(a)(5). The Act incorporates these groups into its regulatory scheme by providing for certification of "qualified State beef councils," which are

authorized to carry out certain functions under the Act. *Id.*, §2902(14).[5]

Forty-five States have established qualified state beef councils under authority of the Beef Act,[6] Trial Tr. 228, confirming the States' substantial interest in continuing their efforts to promote the beef industry through this statute. And while many state beef councils would continue to function under state-law authority if the Beef Act were invalidated, *see infra* Part IV, the States favor maintaining the proven success of the federal-state partnership mandated by the Act, rather than returning to the comparatively ineffectual regime that preceded it.

B. The State Beef Councils' Role in Implementing the Beef Act Evinces a Program of Government Speech.

The status and function of the state beef councils in the Beef Act's promotional program supports Petitioners' position that the Act's generic advertising is government speech. The councils are constrained to deliver a message specified by Congress, a politically accountable official—the Secretary of Agriculture— exercises ultimate control over that message, and the councils function as governmental agencies in disseminating that message.

1. Congress and the Secretary specify the message conveyed by the state beef councils.

At the state level, qualified state beef councils may retain up to half of the checkoff assessments they collect to fund in-state promotion, research, and information programs authorized by the

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5. For example, the councils are charged with collecting the checkoff assessments on cattle sales that fund the projects authorized by the Act. 7 U.S.C. §2904(8)(A); 7 C.F.R. §1260.172.

6. Only Alaska, Connecticut, Massachusetts, New Hampshire, and Rhode Island have not established qualified state beef councils.

Act. 7 C.F.R. §1260.172; Trial Tr. 206-07, 316.[7] With respect to promotional messages, Congress has defined precisely the "promotion" that the state beef councils can convey: "advanc[ing] the image and desirability of beef and beef products with the express intent of improving the competitive position and stimulating sales of beef and beef products in the marketplace." 7 U.S.C. §2902(13), (14).[8] These promotional activities must "take

7. Some qualified state beef councils choose to retain less than half of the collected assessments for in-state projects, remitting the additional funds to support national projects. *See, e.g.*, IOWA BEEF INDUS. COUNCIL, ABOUT THE IOWA BEEF INDUSTRY COUNCIL 1 (2004) (noting that Iowa council retains 25% of collected assessments and contributes the remainder to national programs); KAN. BEEF COUNCIL, WHO WE ARE 1 (2004) (relating that the Kansas council retains 15% of collected assessments and contributes the remainder to national programs). Thus, while the state beef councils annually collect and control approximately $37 million in checkoff revenues, they spend $25 million on state-level programs and forward the remainder to be pooled and used to fund national programs. *See* Trial Tr. 229. This option permits States with relatively high volumes of beef production, but relatively few consumers, to maximize the return of their checkoff dollars. For example, the "Beef Belt" States—Colorado, Iowa, Kansas, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas—annually generate over 62% of Beef Act checkoff revenues, but are home to only 15% of the national population. *See* CATTLEMEN'S BEEF PROMOTION & RESEARCH BD., 2003 BEEF BD. ANNUAL REPORT 19 (2003); U.S. CENSUS BUREAU, POPULATION CHANGE & DISTRIBUTION 1990 TO 2000, at 2 (2001).

8. *See, e.g.*, ALA. CATTLEMEN'S ASSOC., ABOUT US 2 (2000) (explaining use of Alabama checkoff programs to increase consumer demand); GA. BEEF BD., ABOUT THE GEORGIA BEEF BOARD 1 (2004) (reporting use of assessments to develop foreign markets for Georgia beef); HAW. BEEF INDUS. COUNCIL, COLLECTION BROCHURE 2 (Mar. 1997) (describing use of assessments to produce a "Hawaii Beef/Cattle Industry" brochure and to sponsor promotional events at Hawaii farm fairs); IDAHO BEEF COUNCIL, ANNUAL REPORT OF ACTIVITIES 1 (2003) (noting use of

into account similarities and differences between certain beef, beef products, and veal," and "ensure that segments of the beef industry that enjoy a unique consumer identity receive equitable and fair treatment." *Id.*, §2904(4)(B)(i)-(ii).

The Secretary has imposed additional limits on the councils' promotional activities in the Beef Order. 7 C.F.R. §1260.181(b).

assessments to send media kits regarding the Idaho beef industry to Idaho media outlets); IND. BEEF COUNCIL, BEEF CHECKOFF 1 (2004) (describing use of checkoff funds for Indiana promotional activities); IOWA BEEF INDUS. COUNCIL, ABOUT THE IOWA BEEF INDUSTRY COUNCIL 1 (2004) (reporting use of assessments to develop foreign markets for Iowa beef); MINN. BEEF COUNCIL, MINNESOTA BEEF COUNCIL 1 (2004) (noting use of checkoff-funded programs "to strengthen the beef industry's market position in Minnesota"); MO. BEEF INDUS. COUNCIL, MBIC ANNUAL REPORT FY02 1-2 (2003) (describing sponsorship of print and radio advertising in Missouri and promotional events at Missouri supermarkets); NEB. BEEF COUNCIL, 2003 ANNUAL REPORT 1 (2004) (explaining checkoff funding of Nebraska television and radio advertisements and promotional events); OKLA. BEEF INDUS. COUNCIL, OKLAHOMA PRODUCERS HELP FUND NEW YORK PROMOTION (May 13, 2002) (describing Oklahoma council's use of assessments to assist New York council with beef promotion campaign in western New York); OR. BEEF COUNCIL, 2002-2003 ANNUAL REPORT 1 (2003) (explaining checkoff funding of Oregon radio advertising and promotional events); S.C. BEEF BD., MISSION STATEMENT (2004) (noting use of checkoff funds to increase demand for beef in South Carolina); S.D. BEEF INDUS. COUNCIL, BEEF INDUSTRY COUNCIL MATERIALS (2004) (listing checkoff-funded promotional materials published by South Dakota council); TENN. BEEF INDUS. COUNCIL, 2003 ANNUAL REPORT 1 (2004) (explaining checkoff funding of Tennessee television and internet advertisements and promotional events); VA. BEEF INDUS. COUNCIL, THE BEEF BUZZ 1 (2004) (describing retailer-incentive program to promote beef in Virginia); WIS. BEEF COUNCIL, 2003 ANNUAL REPORT 1 (2003) (detailing use of assessments to fund promotional activities at Wisconsin State Fair and advertising on Wisconsin radio stations).

For example, the councils' advertising is subject to the same constraints imposed on national projects, *id.*, §1260.181(b)(1), which prohibit "reference to a brand or trade name of any beef product . . . without the approval of the Board and the Secretary," *id.*, §1260.169(d). The councils also may not use checkoff funds under the Act for a message that aims to "influenc[e] governmental policy or action" or uses "any unfair or deceptive acts or practices," including any message that would disparage a competing product (*e.g.*, a particular brand of beef or other foods such as poultry and fish). *Id.*, §1260.181(b)(7); *see also* Trial Tr. 269-70, 273.

Beyond these statutory and regulatory directives, the Secretary may instruct the state beef councils to communicate a specific message within the scope of the Act and Order. For example, the Secretary has used the state beef councils to implement an initiative aimed at minority farmers. Trial Tr. 295-96.

In sum, when the state beef councils engage in activities funded through the Beef Act, they are not espousing their own views. Rather, they are communicating a message carefully determined by the federal government. That Congress and the Secretary dictate the content of the state beef councils' activities in this manner indicates that the message being delivered is government speech. *See Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 303 (2000) (holding that school invocation was government speech subject to Establishment Clause restrictions because school regulations "confine the content and topic of the student's message"); *Bd. of Regents of Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 229 (2000) (indicating that state-established program to advance the State's own message would be government speech).

2. The Secretary exercises control over the message conveyed by the state beef councils.

Not only have Congress and the Secretary defined the message the state beef councils can convey, but the Secretary also exercises

ongoing control over the formulation and dissemination of that message. The Secretary appoints all members of the Beef Board, 7 U.S.C. §2904(1), which in turn certifies beef-promotion entities as qualified state beef councils, thereby enabling them to engage in advertising under the Act, 7 C.F.R. §1260.181(a). Through the Beef Board, the Secretary also may require the state beef councils to furnish reports and information about their activities. *See id.*, §1260.181(b)(6). If an audit reveals that a state beef council has improperly used checkoff funds for a message outside the scope of the Beef Act and Beef Order, the Beef Board can seek restitution from the council and the Secretary must approve any settlement of the issue. Trial Tr. 271, 316. In addition, the Secretary can terminate a state program's status as a qualified state beef council if it does not comply with the Act and Order. Trial Tr. 316; *see also* CATTLEMEN'S BEEF PROMOTION & RESEARCH BD., GUIDELINES FOR THE APPROVAL OF PROGRAMS UNDER THE BEEF PROMOTION AND RESEARCH ACT 2 (1990).

And in practice, the Secretary exercises additional control over the message conveyed by the state beef councils through the Department of Agriculture's Agricultural Marketing Service. At the state beef councils' request, the Service will informally review proposed advertising projects and advise whether they would ultimately be approved as permissible manifestations of the message authorized by the Beef Act and Beef Order. Trial Tr. 294-95. In these circumstances, the Service can effectively prevent the state beef councils' development of any message that the Secretary would eventually disallow as outside the scope of the Act. Trial Tr. 295; *see also Charter v. United States Dep't of Agric.*, 230 F.Supp.2d 1121, 1125 (D. Mont. 2002) (observing that "any checkoff-funded project developed by a Qualified State Beef Council must meet USDA approval"), *appeal filed*, No. 02-36140 (CA9 Dec. 24, 2002). Such control is characteristic of government speech. *See Southworth*, 529 U.S., at 229 (indicating that ongoing

government responsibility for message content suggests government speech).

3. The state beef councils function as governmental entities in conveying the message dictated by Congress and the Secretary.

The fact that Congress and the Secretary have specified the message to be conveyed under the Beef Act, and that the Secretary retains ongoing control over the message, establishes that the generic advertising conducted by the state beef councils is government speech. Whether the state beef councils are deemed governmental agencies or private associations is ultimately irrelevant because the Court has made clear that Congress can employ private entities to convey the government's message. *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 541-42 (2001); *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 833 (1995); *Rust v. Sullivan*, 500 U.S. 173, 192-93 (1991). That said, the state beef councils function more like governmental agencies than private entities in carrying out the promotional programs authorized by the Beef Act, further illustrating that these activities constitute government speech.

The majority of the qualified state beef councils are either created or certified by state legislatures to carry out specified governmental objectives, including promotional activities, research, and the dissemination of producer and consumer information authorized by the Beef Act.[9] Indeed, some are explicitly described

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9. *See, e.g.*, ALA. CODE §2-8-4; ARIZ. REV. STAT. §3-1232; ARK. CODE ANN. §2-35-303; CAL. FOOD & AGRIC. CODE §64591; COLO. REV. STAT. §35-57-104(1); DEL. CODE ANN. tit. 3, §704(a); FLA. STAT. ANN. §573.112; GA. CODE ANN. §2-8-92; IDAHO CODE §25-2901; 505 ILL. COMP. STAT. 25/4; IND. CODE §15-4-3.5-3; IOWA CODE §181.3; KY. REV. STAT. ANN. §247.630; LA. REV. STAT. ANN. §3:555.4; MICH. COMP. LAWS §287.603; MINN. STAT. §17.54; MO. REV. STAT. §275.320; MONT. CODE ANN. §80-11-510; N.J. STAT. ANN §4:10-52; N.M. STAT. ANN. §77-2A-3; N.Y. AGRIC. & MKTS. LAW §294(9); N.D. CENT. CODE §4-34-03; OHIO REV. CODE ANN. §924.07; OR. REV. STAT. §577.210; 3 PA. CONS. STAT. §4504; S.C. CODE ANN. §46-17-190; TENN. CODE ANN. §43-29-118; TEX. AGRIC. CODE §41.051; VA. CODE ANN. §3.1-796.15; WASH. REV. CODE §16.67.040; WIS. STAT. §96.10; WYO. STAT. ANN. §11-37-103.

as state agencies or political subdivisions under state law.[10] And all state beef councils effectively enjoy the status of a state agency: in dictating that there can be only one qualified beef council in each State, Congress ensured that each council has exclusive jurisdiction over its functions in its own State, just as a state agency would. 7 U.S.C. §2904(8)(C).

And like state agencies, the qualified state beef councils are constrained by their enabling legislation—here, the Beef Act. A state beef council is not authorized to conduct promotional activities under the Beef Act until the Secretary certifies the council as a "qualified State beef council" as defined by the Beef Act and

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10. *See, e.g.*, ARIZ. REV. STAT. §3-1232(D) (referring to Arizona council members as "state officers"); COLO. REV. STAT. §35-57-104(1) (creating Colorado council as "a political subdivision of the state"); GA. CODE ANN. §2-8-94 (stating that Georgia Agricultural Commodity Commission for Beef is an "instrumentality of the state"); LA. REV. STAT. ANN. §3:555.4(A) (referring to Louisiana council as agency within the State Department of Agriculture); MICH. COMP. LAWS §287.603 (creating Michigan council within the State Department of Agriculture); TEX. AGRIC. CODE §41.052 (providing that a state commodity marketing board is a "state agency" and "governmental unit" for certain purposes); VA. CODE ANN. §3.1-796.15 (describing Virginia council as an entity within the State Department of Agriculture); WASH. REV. CODE §16.67.095 (decreeing that Washington council "speak[s] on behalf of Washington state government"); WYO. STAT. ANN. §11-37-103 (declaring that Wyoming council is an entity within the State Department of Agriculture).

Beef Order. 7 U.S.C. §2902(14); 7 C.F.R. §1260.181. If a council uses checkoff funds for activities outside the scope of the Act and Order, the Secretary can terminate the council's status as a "qualified State beef council," Trial Tr. 316, regardless of its continuing existence under state law. For these reasons, the qualified state beef councils operate as governmental entities when they engage in advertising activities authorized by the Act, conveying a message of government speech. *Cf. Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 400 (1995) (holding that Amtrak is a governmental entity for First Amendment purposes because Congress created it to serve a governmental purpose and appointed a majority of its directors).

II. COMMODITY-MARKETING PROGRAMS SUCH AS THE BEEF ACT ARE A PERMISSIBLE FORM OF GOVERNMENT SPEECH EXERCISED BY THE STATES.

The Beef Act exemplifies a common form of government speech exercised by the States: commodity-marketing programs to promote the agricultural sector of state economies. The States' widespread use of these programs stems from unique attributes of agricultural economics that warrant governmental intervention as a speaker. Nevertheless, Respondents propose limitations that would exclude such programs from the ambit of government speech. These limits find no basis in the Court's precedents and impose unreasonable constraints on state government.

A. State Governments Frequently Employ Commodity-Marketing Programs to Address a Public-Good Problem.

Almost all States have created their own agriculture commodity-marketing programs by statute. *See* Appendix. While these programs may vary in structure and function from the Beef Act, *see infra* Part IV, they generally operate according to a common model: they levy assessments on agricultural commodities to fund activities—including advertising, research, and

informational programs—that promote or enhance the commodity as a consumer good.

States have legislated these programs to address a problem inherent in many agricultural industries. When a particular commodity is relatively homogenous, an individual producer cannot capture all of the benefit created by its efforts to market that commodity; rather, that benefit will "spill over" and be shared by other producers of the commodity that did not share the marketing cost. This problem is magnified when there are many relatively small producers, as is frequently the case in agriculture.[11] The benefits of the marketing are spread among so many firms that the benefit received by any firm supplying the marketing will likely be less than the costs incurred to generate it. Indeed, the smallest producers may lack the resources to engage in any meaningful advertising. Under these circumstances, the rational individual producer has an incentive not to undertake the advertising at all, but instead to "free ride" on the efforts of firms that do advertise. Because each producer faces similar incentives, a sub-optimal amount of advertising is generated, and the industry—and, therefore, the state economy— suffers. *See* Hoy F. Carman et al., *Marketing California's Agriculture Production*, *in* CALIFORNIA AGRICULTURE: DIMENSIONS AND ISSUES 113-14 & n.5 (Jerry Siebert ed., 2004); John M. Crespi, *The Generic Advertising Controversy: How Did We Get Here and Where are We Going?*, 25 REV. AGRIC. ECON. 295-96 (2003).

This market failure presents a "public-good problem" where government intervention can rectify the situation. Classic examples of such public goods include roads and parks. Because a private

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11. For example, approximately 80% of the 831,000 beef cowherds in the United States have less than fifty head of cattle. DAN OTTO & JOHN D. LAWRENCE, ECONOMIC IMPACT OF THE UNITED STATES BEEF INDUSTRY 1 (2001).

actor cannot effectively exclude others from using these facilities or recapture his costs in constructing them, he lacks the necessary incentive to provide them in the first instance. The government can address this problem by raising funds from the citizenry, or a portion thereof, and thereby provide the public good. In this case, the public good happens to be a form of speech, namely generic advertising. *See United States v. United Foods, Inc.*, 533 U.S. 405, 421 (2001) (Breyer, J., dissenting) ("[C]ollective promotion and research is a perfectly traditional form of government intervention in the marketplace.").

In game-theoretic terms, each individual producer faces a classic "prisoner's dilemma" with respect to generic advertising. All producers are best off, and the public good is maximized, if robust advertising is provided. All producers are worst off, and the public good is diminished, if there is little to no generic advertising. But, each producer's individual profit-maximizing course is (1) to spend no money himself on advertising, and (2) to reap the benefits of robust generic advertising by others. Accordingly, following the rational incentives of each individual producer—absent credible collective action (here, provided by the Beef Act)—all producers end up at the least optimal outcome, and the public good is diminished.

Addressing such market failures is a classic government function. But in providing the public good of commodity marketing, States do not simply facilitate private advertising that individual producers would otherwise lack the incentive to create. Rather, they engage in government speech because they direct and control the message in a way that not only promotes the commodity, but does so in a manner consistent with the States' general policy concerns. *See Southworth*, 529 U.S., at 229. The restrictions on promotional activities under the Beef Act highlight this distinction. For example, state beef councils may not use checkoff funds for a message that uses "any unfair or deceptive acts or practices," 7 C.F.R. §1260.181(b)(7), because the government has an interest in

protecting consumers at the same time it is promoting the beef industry. Likewise, state beef councils cannot promote a message that disparages a competing product, such as poultry, Trial Tr. 269-70, 273, because the government—in contrast to the beef industry—has an interest in the success of competing agricultural sectors. Thus, while the government's and industry's interests largely coincide, these programs communicate the government's viewpoint; as such, the message delivered is government speech.

B. Limitations That Exclude Commodity-Marketing Programs from the Definition of Government Speech Have No Legal Basis and Impose Unreasonable Constraints on State Government.

In the face of this widespread use of commodity-marketing programs by States, Respondents and others have proposed limits on the government-speech doctrine that would exclude these programs from its reach. They claim that programs such as the Beef Act do not qualify as government speech because (1) the government funds them from a targeted assessment rather than general tax revenues, Br. in Opp. 18-19, 24, and (2) the advertising originates from the assessed producers—*i.e.*, it is private actors, and not government employees, who compose the message actually delivered, Br. in Opp. 20.[12]

Requiring state governments to fund their speech only out of general tax revenues, rather than targeted assessments, is an artificial distinction that does not address Respondents' principal complaint. Even if the government funded commodity-marketing programs out of the general fisc, some of those revenues invariably

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12. *See also United States v. United Foods, Inc.*, No. 00-276, Oral Argument Tr. 33, ll. 8-14 (Apr. 17, 2001) (counsel for United Foods) (suggesting that exacting government prescription of the message, as in the Surgeon General's warning that appears on cigarette packages, is a necessary characteristic of government speech).

would be drawn from persons who disagree with the government's message. *See Buckley v. Valeo*, 424 U.S. 1, 92 (1976) (observing that "every appropriation made by Congress uses public money in a manner to which some taxpayers object"). The Court has required only that government speech be paid for with funds "raised by the government." *Southworth*, 529 U.S., at 229. It has never dictated from whom those funds must be exacted.

Moreover, imposing this limitation on commodity-marketing programs and other forms of government speech cannot be squared with the normal functioning of state government. As previously discussed, generic commodity marketing is a public good provided by the State, like roads and parks. *See supra* Part II.A. In turn, the State may rationally conclude that it should fund that public good by assessing the segment of the citizenry that stands to reap the greatest benefit—that is, the State can fund commodity marketing by assessing the producers of that commodity, just as it can fund roads by charging drivers a toll, fund parks by charging visitors entrance fees, and fund public lands by charging ranchers grazing fees.

Indeed, facing "substantial budget deficits" and "[w]idespread opposition to tax increases" over the last four years, States have increasingly resorted to such "user fees" to fund public services consistent with the public's mandate. *See* John M. Broder, *Despite Signs of Economic Recovery, States' Budgets Are Still Reeling*, N.Y. TIMES, Jan. 5, 2004, at A12.[13] This revenue mechanism is no

13. For fiscal years 2002-2004, 34 States enacted user-fee increases to address budget shortfalls. *See* NAT'L GOVERNORS ASS'N ET AL., THE FISCAL SURVEY OF STATES: DECEMBER 2003, at 12; NAT'L GOVERNORS ASS'N ET AL., THE FISCAL SURVEY OF STATES: NOVEMBER 2002, at 11; NAT'L GOVERNORS ASS'N ET AL., THE FISCAL SURVEY OF STATES: DECEMBER 2001, at 11.

less legitimate when the public service involves government speech.

The contention that government speech must strictly be created by the government itself is likewise unfounded. In *Rust*, for example, the Department of Health and Human Services did not provide Title X physicians with a script to read in counseling their patients. Rather, the challenged regulations contained broad directives that generally defined the contours, but not the precise language, of the government's message. 500 U.S., at 179-80. Within those contours, the doctors could compose and deliver the counseling message in their own words.[14] Developing the government's message in this manner did not transform that message from government speech to private speech. *Cf. Santa Fe Indep. Sch. Dist.*, 530 U.S., at 303 (holding that student invocation at school event was government speech for Establishment Clause purposes where school regulations "confine [its] content and topic" even though students actually draft its language).

In any event, limiting government speech to messages specifically scripted by legislators or other public officials ignores the realities of state government. No State has a creative monopoly on the manner in which it can best accomplish its objectives—including the communication of a governmental message. Budgetary and structural constraints may also limit States' abilities to produce messages using only government employees and resources. Outsourcing the development of specific advertising programs within the scope of a general legislative directive may often be the most efficient and effective means of generating and conveying the State's message. But because the State authorizes

14. The regulations provided "examples" of how the government's message could be communicated in the context of a doctor-patient conference, 42 C.F.R. §59.8(b) (1989), but did not dictate that the message be conveyed using certain language.

the program and controls the general message, the result remains government speech. *Southworth*, 529 U.S., at 229.[15]

III. THE BEEF ACT IS A PERMISSIBLE REGULATION OF COMMERCIAL SPEECH UNDER THE *CENTRAL HUDSON* TEST.

The *amici* States agree with Petitioners that, even if the Court concludes that generic advertising under the Beef Act is not government speech, the Act's advertising provisions are nevertheless a permissible regulation of commercial speech under the standard set forth in *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980). The States' experiences under the Act and its predecessor confirm that the current regulatory scheme promotes a "substantial" governmental interest, "directly advances" that interest, and is "not more extensive than is necessary to serve that interest." *See id.*, at 566.

As discussed previously, the States share the substantial governmental interests expressly articulated by Congress in the Beef Act. *See supra* Part I.A; 7 U.S.C. §2901. Apart from the statistical evidence of the beef industry's impact on state economies, the fact that ninety percent of the States participate in

15. State outsourcing of "message composition" is by no means limited to commodity-marketing programs. *See, e.g.*, KY. REV. STAT. ANN. §117.900 (establishing statewide student contest for slogan relating to voter registration); N.Y. ECON. DEV. LAW §§160-68 ("New York State Tourist Promotion Act") (providing state matching funds for firms that develop approved advertising for state tourism within "central conceptual themes" determined by the State); KAISER COMM'N ON MEDICAID & THE UNINSURED, MARKETING MEDICAID & CHIP: A STUDY OF STATE ADVERTISING CAMPAIGNS iii (Oct. 2000) (noting that several States use outside marketing firms to design and run advertising campaigns to raise awareness of, and enrollment in, their State Child Health Insurance Programs and Medicaid programs).

Beef Act programs through their state beef councils demonstrates the States' significant stake in the industry. *See supra* Part I.A.

The Beef Act and Beef Order also directly advance the States' interests by allowing them to control a portion of the assessments to conduct state-level promotion activities. These promotion efforts stimulate demand for beef, supporting that sector of the States' economies. *See* Ronald W. Ward & Chuck Lambert, *Generic Promotion of Beef: Measuring the Impact of the U.S. Beef Checkoff*, 44 J. AGRIC. ECON. 456, 464 (1993) (describing nearly six-fold returns on checkoff dollars); *see also Central Hudson*, 447 U.S., at 569 (noting connection between advertising and demand). And as discussed previously, the mandatory assessment advances the States' interest in preventing the "free-rider problem" and the resulting sub-optimal level of commodity advertising. *See supra* Part II.A.

Finally, the Beef Act and Beef Order are no more extensive than necessary to serve the government's interests. The history of the Beef Act demonstrates the compelling need for mandatory assessments. As discussed previously, earlier incarnations of the beef checkoff program at the federal and state level based on voluntary assessments failed to advance adequately the government's interests in promoting beef. *See supra* Part I.A. Only after institution of the current mandatory checkoff in a coordinated federal-state program did States realize a substantial return for their beef promotion efforts. *See* Ward & Lambert, *supra*, at 464; *see also United Foods*, 533 U.S., at 430 (Breyer, J., dissenting) (observing that "compelled contributions may be necessary to maintain a collective advertising program in that rational producers would otherwise take a free ride on the expenditures of others"). At the same time, objecting producers are not without recourse under the Act: they may nominate like-minded producers to serve on the Beef Board to voice their concerns, 7 U.S.C. §2904(1), and they may seek a referendum to terminate the checkoff program altogether, 7 U.S.C. §2906(b). They are also free to generate and

disseminate a competing message using non-checkoff funds. In this manner, the Beef Act reasonably accommodates the potentially divergent interests of affected producers while still effectively achieving the government's substantial interest in promoting beef. *See In re R.M.J.*, 455 U.S. 191, 203 (1982) (holding that, under the *Central Hudson* test, the government's "interference with speech must be in proportion to the interest served").

IV. If the Court Affirms the Judgment, It Should Specify That Its Holding Is Limited to the Particular Structure and Function of the Beef Act.

The *amici* States believe that the Beef Act is entirely constitutional. If the Court rejects Petitioners' arguments and holds that the Beef Act unconstitutionally compels Respondents' funding of generic advertising, many state beef marketing programs will nevertheless continue under authority of state law. *See supra* n.9; *see also* Appendix. Some States enacted these programs prior to the current Beef Act and have held them in abeyance while the federal program is in place.[16] Other States have retained their

16. *See, e.g.*, ARK. CODE ANN. §2-35-304(d) ("If the federal Beef Promotion and Research Act of 1985 and the administrative orders and rules adopted under it are discontinued for any reason, the assessment of twenty-five cents (25¢) per head of cattle sold in this state shall be reactivated the same as if the national program had never existed . . . ."); IOWA CODE §181.7A ("The council shall suspend the state assessment upon collection of the federal assessment."); KY. REV. STAT. ANN. §247.652(3) ("In the event the one dollar ($1) assessment provided by the federal act is terminated or suspended, the assessment on each Kentucky producer of a bovine animal shall continue . . . ."); MO. REV. STAT. §275.352 ("If a national referendum among beef producers passes and a federal assessment on beef producers is adopted pursuant to federal law, no state fees shall be collected under the provisions of this chapter, in excess of a commensurate amount credited against the obligation to pay any such federal assessment.")

authority for state programs concurrent with the Beef Act program.[17] Still others have enacted new beef-checkoff programs that will activate if the Beef Act is repealed or permanently enjoined.[18] These programs may vary in structure and operation from the Beef Act, but any such variances are not before the Court in this case. Therefore, the *amici* States submit that their state programs may still qualify as government speech, a constitutional regulation of commercial speech, or part of a permissible "broad regulatory scheme" under *Glickman v. Wileman Bros. & Elliott, Inc.*, 521 U.S. 457 (1997), even if the Beef Act is struck.

For example, many state programs contain a mechanism for refunding assessments to objecting producers.[19] As such, these

17. *See, e.g.*, 505 ILL. COMP. STAT. 25/9 (authorizing collection of federal and state assessments); LA. REV. STAT. ANN. §3:555.8 (same); N.D. CENT. CODE §4-34-08 (authorizing collection of federal *or* state assessment, whichever is greater); OR. REV. STAT. §577.512 (authorizing collection of federal and state assessments); WASH. REV. CODE §§16.67.120-.122 (same).

18. *See, e.g.*, 2004 Fla. Laws ch. 2004-65, §2 (providing that the Florida checkoff program cannot take effect until the stay of the injunction in this case is lifted or the Beef Act and Beef Order are otherwise repealed); 2004 Ga. Laws Act 728, §3-1(b) (providing that Georgia checkoff program will not become effective and will self-repeal unless the Court affirms the judgment in this case); TEX. AGRIC. CODE §41.162 (2003 law authorizing referendum on state assessment program).

19. ALA. CODE §2-8-15; ARK CODE ANN. §2-35-310; COLO. REV. STAT. §35-57-119; FLA. STAT. ANN. §570.9135(11); GA. CODE ANN. §2-8-104(b)(3); 505 ILL. COMP. STAT. 25/10; IOWA CODE §181.12; KY. REV. STAT. ANN. §247.675; LA. REV. STAT. ANN. §3:555.9; MINN. STAT. §17.63; MO. REV. STAT. §275.360; N.M. STAT. §77-2A-7.3; N.C. GEN. STAT. §106-567; N.D. CENT. CODE §4-34-11; OHIO REV. CODE §924.09; S.C. CODE ANN. §46-17-360; TENN. CODE ANN. §43-29-111; TEX. AGRIC. CODE §41.083; UTAH CODE ANN. §4-21-4.

programs do not irrevocably compel the funding of advertising in the manner of the Beef Act. Whether these refund provisions rectify any compelled-speech problem under the First Amendment could depend on, *inter alia*, the risk that such funds would be used for impermissible purposes (and it is well-established that checkoff assessments are used for a variety of unobjectionable activities, such as research[20] and consumer and producer information[21]), and

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20. *See, e.g.*, IDAHO BEEF COUNCIL, ANNUAL REPORT OF ACTIVITIES 2 (2003) (describing checkoff funding of research at the University of Idaho regarding cattle diseases and the anti-carcinogenic effects of conjugated linoleic acid, a substance naturally occurring in beef); ILL. BEEF ASSOC., ILLINOIS BEEF QUALITY INITIATIVE 1 (2004) (explaining checkoff-funded data collection program to assist in cattle health management); MO. BEEF INDUS. COUNCIL, MBIC ANNUAL REPORT FY02 (2003) (describing support of research projects at University of Missouri-Columbia relating to beef pathogen detection and control); NEB. BEEF COUNCIL, 2003 ANNUAL REPORT 1 (2004) (noting funding of *E. coli* research at University of Nebraska-Lincoln); OR. BEEF COUNCIL, 2002-2003 ANNUAL REPORT 1-2 (2003) (describing checkoff-funding of marketing study).

21. *See, e.g.*, ALA. CATTLEMEN'S ASSOC., ABOUT US 4 (2000) (noting efforts responding to inquiries about drought and food-safety concerns); CAL. BEEF COUNCIL, STATEMENT REGARDING BSE CASE IN WASHINGTON STATE (Dec. 29, 2003); IDAHO BEEF COUNCIL, ANNUAL REPORT OF ACTIVITIES 1 (2003) (explaining role in responding to reports of BSE in Canada); ME. BEEF INDUS. COUNCIL, JANUARY UPDATE & INFORMATION 2 (Jan. 26, 2004) (relating efforts responding to inquiries about BSE); MO. BEEF INDUS. COUNCIL, MBIC ANNUAL REPORT FY02 3 (2003) (noting work with Missouri organizations and agencies to develop an animal disease emergency response plan); NEB. BEEF COUNCIL, 2003 ANNUAL REPORT 1 (2004) (detailing participation in conference on obesity and cardiovascular disease); *Oklahoma Checkoff Responds to BSE*, DOLLARS & SENSE (Okla. Beef Council, Oklahoma City, Okla.), Jan. 2004, at 1(listing efforts responding to inquiries about BSE); OR. BEEF COUNCIL, 2002-2003 ANNUAL REPORT 1-2 (2003)

the expediency and impartiality of the refund procedure. *See Chicago Teachers Union v. Hudson*, 475 U.S. 292, 304-09 (1986). These factors and others would have to be evaluated in the context of a particular program.

For this reason, if the Court concludes the Beef Act is unconstitutional, the *amici* States urge the Court to expressly limit its holding to the terms of the Beef Act itself.

CONCLUSION

The Court should reverse the judgment of the Eighth Circuit Court of Appeals.

(describing participation in seminar on irradiated beef and communications regarding nutrition, BSE, and other consumer issues); *State Partners Respond: BSE in America*, TENNESSEE BEEF INDUSTRY UPDATE (Tenn. Beef Indus. Council, Franklin, Tenn.), Feb. 2004, at 1-2 (noting efforts responding to BSE inquiries); TEX. BEEF COUNCIL, THE FACTS ON FOOD SAFETY 1 (2004) (providing consumer information regarding safe storage and preparation of beef); WIS. BEEF COUNCIL, 2003 ANNUAL REPORT 1 (2003) (detailing communications with producers regarding quality control issues at beef industry conventions and with health professionals regarding nutrition issues).

Respectfully submitted,

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APPENDIX
STATE COMMODITY-MARKETING PROGRAMS

Commodity	State Legislated Programs
General	CAL. FOOD & AGRIC. CODE §§58601-59293; COLO. REV. STAT. §§35-28-102 to -123; DEL. CODE ANN. tit. 3, §§702-717; FLA. STAT. ANN. §§573.101-.124; GA. CODE ANN. §§2-8-1 to -79; IND. CODE §§15-4-3.5-1 to -10; LA. REV. STAT. ANN. §§3:552.1-.26; ME. REV. STAT. ANN. tit. 7, §§401-403; MD. CODE ANN., AGRIC. §§10-101 to -116; MICH. COMP. LAWS §§290.651-.674; MINN. STAT. §§17.50-.69; MISS. CODE ANN. §§69-45-1 to -15; MO. REV. STAT. §§275.300-.370; MONT. CODE ANN. §§80-11-501 to -519; NEB. REV. STAT. §§2-3801 to -3812; N.J. STAT. ANN. §§4:10-43 to -75; N.Y. AGRIC. & MKTS. LAW §§292-295; N.C. GEN. STAT. §§106-550 to -568; OHIO REV. CODE ANN. §§924.01-.99; 3 PA. CONS. STAT. §§4501-4513; S.C. CODE ANN. §§46-17-10 to -470; TENN. CODE ANN. §§43-29-101 to -120; TEX. AGRIC. CODE §§41.001-.127; VT. STAT. ANN. tit. 6, §§2961-2965; WASH. REV. CODE §§15.65.010-.910; WIS. STAT. §96.01-.20
Alfalfa/ alfalfa seed	IDAHO CODE §§22-4201 to -4218; NEV. REV. STAT. §§587.131-.185; MONT. CODE ANN. §§80-11-301 to -313; OR. REV. STAT. §576.062(9)
Apples	CAL. FOOD & AGRIC. CODE §§75501-75656; IDAHO CODE §§22-3601 to -3616; MASS. GEN. LAWS ch. 128, §§102-115; N.H. REV. STAT. ANN. §§434:33-:40; VA. CODE ANN. §§3.1-618 to -636; WASH. REV. CODE §§15.24.010-.920
Aquaculture	MO. REV. STAT. §§275.450-.455

Asparagus	CAL. FOOD & AGRIC. CODE §§78201-78305
Avocados	CAL. FOOD & AGRIC. CODE §§67001-67143
Barley	IDAHO CODE §§22-4001 to -4019; MONT. CODE ANN. §§80-11-201 to -224; N.D. CENT. CODE §§4-10.4-01 to -14
Beans	IDAHO CODE §§22-2911 to -2923; MICH. COMP. LAWS §§290.551-.568; NEB. REV. STAT. §§2-3735 to -3765; N.D. CENT. CODE §§4-10.3-01 to -13
Beef/cattle	ALA. CODE §§2-8-1 to -22; ARIZ. REV. STAT. §§3-1231 to -1239; ARK. CODE ANN. §§2-35-401 to -407; CAL. FOOD & AGRIC. CODE §§64501-64736; COLO. REV. STAT. §§35-57-101 to -120; IDAHO CODE §§25-2901 to -2912; 505 ILL. COMP. STAT. 25/1-25/16; IOWA CODE §§181.1-.20; KY. REV. STAT. ANN. §§247.610-.685; LA. REV. STAT. ANN. §§3:555.1-.13; MICH. COMP. LAWS §§287.601-.610; N.M. STAT. ANN. §§77-2A-1 to -9; N.D. CENT. CODE §§4-34-01 to -14; OR. REV. STAT. §§577.110-.990; TEX. AGRIC. CODE §§41.151-.164; UTAH CODE ANN. §§4-21-1 to -5; VA. CODE ANN. §§3.1-796.13 to -796.28; WASH. REV. CODE §§16.67.010-.920; WYO. STAT. ANN. §§11-37-101 to -110
Blackberries/ raspberries	OR. REV. STAT. §576.062(20)
Blueberries	OR. REV. STAT. §576.062(11)
Catfish	ALA. CODE §§2-8-270 to -291
Cherries	IDAHO CODE §§22-3701 to -3716; OR. REV. STAT. §576.062(23)

Citrus fruits	FLA. STAT. ANN. §§601.01-.992
Corn	505 ILL. COMP. STAT. 40/1-40/23; IND. CODE §§15-4-10-1 to -31; KY. REV. STAT. ANN. §§247.6001-.6035; NEB. REV. STAT. §§2-3601 to -3635; N.D. CENT. CODE §§4-10.6-01 to -16; S.D. CODIFIED LAWS §§38-32-1 to -24; VA. CODE ANN. §§3.1-1031 to -1049
Cotton	ALA. CODE §§ 2-8-190 to -211; VA. CODE ANN. §§3.1-1081 to -1103
Crawfish	LA. REV. STAT. ANN. §§3:556.1-.13
Dairy/milk	ALA. CODE §§2-13-110 to -125; CAL. FOOD & AGRIC. CODE §§64001-64322; IDAHO CODE §§25-3101 to -3123; 505 ILL. COMP. STAT. 95/1-95/21; KY. REV. STAT. ANN. §§247.450-.505, 247.4451-.4483; LA. REV. STAT. ANN. §§3:557.1-.12; ME. REV. STAT. ANN. tit. 7, §§2991-2994; MISS. CODE ANN. §§69-35-1 to -33; NEB. REV. STAT. §§2-3948 to -3964; NEV. REV. STAT. §§584.031-.093, 584.325-.419; N.C. GEN. STAT. §§106-266.6 to -266.21; N.D. CENT. CODE §§4-27-01 to -12; OR. REV. STAT. §576.062(1); UTAH CODE ANN. §§4-22-1 to -10; VA. CODE ANN. §§3.1-425 to -461; VT. STAT. ANN. tit. 6, §§2971-2989; WASH. REV. CODE §§15.44.010-.910; WYO. STAT. ANN. §§11-36-101 to -110
Dates	CAL. FOOD & AGRIC. CODE §§77701-77886
Eggs	ALA. CODE §§2-8-150 to -171; KY. REV. STAT. ANN. §§247.850-.865; LA. REV. STAT. ANN. §§3:551.1-.12; MISS. CODE ANN. §§69-7-251 to -275; NEB. REV. STAT. §§2-3401 to -3416; VA. CODE ANN. §§3.1-796.11:2 to -796.11:10

Flowers	CAL. FOOD & AGRIC. CODE §§77901-78006
Forest products	CAL. FOOD & AGRIC. CODE §§77501-77666
Goats	ALA. CODE §§2-8-310 to -32; N.M. STAT. ANN. §§77-8A-1 to -11;
Grain	ALA. CODE §§2-8-230 to -252; ARIZ. REV. STAT. §§3-581 to -594; KAN. STAT. ANN. §§2-3001 to -3013; KY. REV. STAT. ANN. §§247.5061-.5095; LA. REV. STAT. ANN. §§3:551.31-.36; OR. REV. STAT. §576.062(6); VA. CODE ANN. §§3.1-684.41 to -684.58
Grape rootstock	CAL. FOOD & AGRIC. CODE §§74750-74796
Honey	IDAHO CODE §§22-2801 to -2810; N.D. CENT. CODE §§4-12.1-01 to -09
Hops	IDAHO CODE §§22-3101 to -3117; OR. REV. STAT. §576.062(16)
Kiwifruit	CAL. FOOD & AGRIC. CODE §§68001-68140
Mint	IDAHO CODE §§22-3801 to -3816; MONT. CODE ANN. §§80-11-401 to -419; OR. REV. STAT. §576.062(17)
Nuts	ALA. CODE §§2-8-120 to -137; OKLA. STAT. ANN. tit. 2, §§18-50 to -62; VA. CODE ANN. §§3.1-647 to -665
Oilseeds	N.D. CENT. CODE §§4-10.2-01 to -13; S.D. CODIFIED LAWS §§38-27-1 to -19
Onions	OR. REV. STAT. §576.062(26)
Oysters	TEX. AGRIC. CODE §§47.001-.055
Pears	OR. REV. STAT. §576.062(10)

Peas/lentils	IDAHO CODE §§22-3501 to -3518; N.D. CENT. CODE §§4-10.7-01 to -17
Pepper	CAL. FOOD & AGRIC. CODE §§77201-77376
Pistachios	CAL. FOOD & AGRIC. CODE §§69001-69114
Pork/swine	ALA. CODE §§2-8-40 to -62; IDAHO CODE §§25-3401 to -3407; IOWA CODE §§183A.1-.14; LA. REV. STAT. ANN. §§3:551.81-.85; S.D. CODIFIED LAWS §§38-33-1 to -12;
Potatoes	IDAHO CODE §§22-1201 to -1215; ME. REV. STAT. ANN. tit. 7, §§991-994, 2151-2157; MICH. COMP. LAWS §§290.421-.429a; NEB. REV. STAT. §§2-1801 to -1826; N.D. CENT. CODE §§4-10-01.1 to -22; OR. REV. STAT. §576.062(8); VA. CODE ANN. §§3.1-684.20 to -684.41
Poultry	NEB. REV. STAT. §§2-3401 to -3416; OR. REV. STAT. §576.062(14); VA. CODE ANN. §§3.1-796.02 to -796.020
Ratite	MISS. CODE ANN. §§69-43-1 to -13
Rice	CAL. FOOD & AGRIC. CODE §§71000-71138; LA. REV. STAT. ANN. §§3:551.61-.68; MISS. CODE ANN. §§69-10-1 to -13;
Salmon	CAL. FOOD & AGRIC. CODE §§76501-76961; OR. REV. STAT. §576.062(4)
Sea urchins	CAL. FOOD & AGRIC. CODE §§79000-79145

Sheep/wool	ALA. CODE §§2-8-310 to -326; CAL. FOOD & AGRIC. CODE §§76201-76384; 505 ILL. COMP. STAT. 115/1-115/23; IOWA CODE §§182.1-.24; KY. REV. STAT. ANN. §§247.6901-.6957; N.M. STAT. ANN. §§77-8A-1 to -11; OR. REV. STAT. §576.062(7); VA. CODE ANN. §§3.1-1065 to -1079
Shrimp	TEX. AGRIC. CODE §§47.001-.055
Sorghum	OKLA. STAT. ANN. tit. 2, §§18-240 to -251; NEB. REV. STAT. §§2-4001 to -4020
Soybeans	ALA. CODE §§2-8-80 to -103; 505 ILL. COMP. STAT. 130/1-130/25; IOWA CODE §§185.1-.34; KY. REV. STAT. ANN. §§247.510-.595; LA. REV. STAT. ANN. §§3:551.31-.36; MISS. CODE ANN. §§69-9-1 to -13; NEB. REV. STAT. §§2-3325 to -3331; N.D. CENT. CODE §§4-10.5-01 to -14; S.D. CODIFIED LAWS §§38-29-1 to -14; TENN. CODE ANN. §§43-20-201 to -216; VA. CODE ANN. §§3.1-684.2 to -684.19
Strawberries	CAL. FOOD & AGRIC. CODE §§77401-77500; LA. REV. STAT. ANN. §§3:471-478; OR. REV. STAT. §576.062(22)
Sweet potatoes	LA. REV. STAT. ANN. §§3:451-458; VA. CODE ANN. §§3.1-666 to -684
Table grapes	CAL. FOOD & AGRIC. CODE §§65500-65675
Tomatoes	CAL. FOOD & AGRIC. CODE §§78601-78725
Tree fruit	WASH. REV. CODE §§15.28.010-.910; W. VA. CODE §§19-2G-1 to -10
Turkey	N.D. CENT. CODE §§4-13.1-01 to -13
Walnuts	CAL. FOOD & AGRIC. CODE §§77001-77195

Wheat	CAL. FOOD & AGRIC. CODE §§72001-72135; IDAHO CODE §§22-3301 to -3319; 505 ILL. COMP. STAT. 145/1-145/110; MONT. CODE ANN. §§80-11-201 to -224; NEB. REV. STAT. §§2-2301 to -2321; N.D. CENT. CODE §§4-28-01 to -09; OR. REV. STAT. §§578.010-.990; S.D. CODIFIED LAWS §§38-10-1 to -41; WYO. STAT. ANN. §§11-38-101 to -110
Wine	MO. REV. STAT. §§275.460-.468; N.J. STAT. ANN. §§4:10-76 to -79; WASH. REV. CODE §§15.88.010-.902
Wine grapes	CAL. FOOD & AGRIC. CODE §§74801-74996